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COCOM Document Sub-C(58)2

july 25th 1958

COORDINATING COMMITTEE

CHAIRMAN'S REPORT

ON

A MEETING OF THE EXPORT CONTROLS SUB-COMMITTEE

April 22nd-25th. 1958

(S)
TH

BELGIUM AND LUXEMBOURG

Mr. Blondiau

DENMARK

Mr. Lund
Mr. Nielsen

FRANCE

Miss Boussac
Mr. Guinebault
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Mr. Poirier
Mr. Mazard
Mr. Abadie

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Mr. von Hahn
Mr. Spekker
Mr. Campbell

ITALY

Mr. Paoli

JAPAN

Mr. Nikai
Mr. Terao
Mr. Kagami

NETHERLANDS

Mr. Lagro
Mr. de Roo

NORWAY

Mr. Schoeyen

UNITED KINGDOM

Mr. Elkington
(Chairman)

Mr. Smith
Mr. Browning
Mr. Palmer

UNITED STATES

Mr. Allen
Mr. Borton
Mrs. Springsteen
Mr. Anderson.

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References: COCOM 2451, 2749, 2791, 2911, 2967, 2972, 2989, 3028, 3029, 3030, 3058, 3083, Sub-C(57)1, W.P.s 3 and 4.

Note: The following document is a detailed report of the discussions which took place in the Sub-Committee. A number of general statements were made in the Committee both before and after the Sub-Committee held its meetings separately. These statements, together with a brief report made to the Committee by the Chairman of the Sub-Committee, will be found in COCOM 3083.

I. IMPORT CERTIFICATE DELIVERY VERIFICATION SCHEME

(a) DVs for goods in bond and Free Trade Zones

1. The CHAIRMAN recalled that the results of the previous year's discussion were to be found in COCOM Sub-C(57)1 paragraph 38. He asked whether Delegations which were still experiencing difficulties considered this a serious or a minor problem.
2. The UNITED STATES Delegate said that his authorities could issue DVs for goods held in bonded warehouses but not for those in Free Trade Zones. It was not a major problem but it contained some difficulties. His authorities had therefore suggested a system whereby the importer would voluntarily agree to subject the consignment to the export controls of the importing country. Full details of this proposal were to be found in COCOM 3029. He pointed out that there were considerable administrative problems involved in keeping track of shipments which might remain in bonded warehouses for a year or more.
3. The GERMAN Delegate stated that his authorities had experienced certain difficulties of a domestic kind. He observed that if the owner of the goods were not a national of the country in which they were stored the only control that could be exercised was to stop a direct shipment to the Soviet Bloc. He recognised that there was a danger of diversion but said that bonded warehouses would lose their value if too many controls were imposed upon their use. The answer was to get third countries to adopt the control system, or a second possibility was the control of the financial transaction in question.
4. The FRENCH Delegate stated that his authorities had experienced fewer cases of difficulty since the last meeting of the Sub-Committee. He said that it was essential for the exporting country to have a DV as soon as possible; to wait one or two years caused administrative difficulties and there was a risk of the case losing its importance. The problem became more acute when the goods had been paid for because the exporter had done all that was required by his authorities. He was in favour of the system proposed by the United States.
5. The GERMAN Delegate said that the remarks of his French colleague well illustrated the difficulties. If the system proposed by the United States authorities (COCOM 3029), were put into practice, the authorities of the country in which the bonded warehouse was situated would have to ask for an IC, which would make the use of a bonded warehouse extremely irksome since speed was essential for goods in bond. It was difficult to find a system which left bonded warehouses and Free Trade Zones the maximum freedom. His own suggestion was that when the owner of the goods was in the country in which the goods were stored, he should be asked for a declaration that he would not forward the goods to the Soviet Bloc. This would be similar to the declaration called for in the case of ICs and the authorities would then issue something similar to a DV.
6. The UNITED STATES Delegate said that he was grateful for the support which had been given by his French colleague and also for the German recognition of the problem. He thought the system proposed in COCOM 3029 would work in the United States. In reply to the point made by the German Delegate on the

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possibility of delay in releasing goods from bonded warehouses, he pointed out that under the system that his authorities were proposing an importer could withdraw his goods at any time and a DV could be issued on the advice of the authorities at the bonded warehouse. Should the importer wish to forward the goods to a third country, an IC would be required.

7. The UNITED KINGDOM Delegate said that ICs might already have been issued for the goods in bond. The issuance of an IC meant the acceptance of the responsibility for the disposal of the goods. A difficulty arose when the final disposal of the goods was not under the control of the authorities issuing the IC.

8. The NETHERLANDS Delegate pointed out that if an importer obtained an IC it simply meant that he intended to import the goods. Proof that he had done so could be obtained when a DV was issued. This applied also to goods in bond.

9. The CHAIRMAN recalled that when the IC/DV scheme had been introduced, the Netherlands authorities had asked for it to be extended to merchanting transactions in which the customer's name was not given, therefore a scheme had been worked out whereby the importer undertook to dispose of the goods only with permission. Timing was the weak spot: the commitment might not be fulfilled for one or two years. He asked the Committee whether they found the system proposed by the United States authorities in COCOM 3029 to be acceptable.

10. The NETHERLANDS Delegate said that in his opinion the United States solution was too optimistic. If it were put on a voluntary basis it would mean that there were no penalties for wrongdoers. He felt that the only satisfactory solution would be trans-shipment licensing, which his authorities could not accept.

11. The BELGIAN Delegate said that the United States proposals entailed making new rules. There were certain difficulties and delays in the present system, but in his own experience these were not numerous. His authorities soon became aware of firms which forwarded goods from bonded warehouses to the Soviet Bloc and were able to hinder their transactions. He felt that this was the most effective way of dealing with the problem.

12. The ITALIAN Delegate stated that he agreed with his Belgian colleague. The control authorities might request the importer at any time to account for the goods.

13. The FRENCH Delegate said that his authorities were in a special position because there were no Free Trade Zones in France, only bonded warehouses under customs control. Goods remaining under ownership of a foreign national were still the responsibility of the authorities of the exporting country. He stated that there was no possibility of unauthorized re-export from France since goods were carefully watched from the time of their entry into bond and could not be re-exported unless the documents, including the IC, were in order.

14. The JAPANESE Delegate said that the customs authorities in Japan issued DVs for goods in bonded warehouses. These goods were under complete customs control. There was another kind of specially designated bonded area for transit goods which were subject to simplified customs handling. No DVs were issued in this case since it was unlikely that the goods would eventually be imported into Japan. No cases had so far arisen of a DV being requested. There was no difficulty about issuing DVs in the former case but it would not be possible in the latter. His authorities were prepared to make a certain attestation if asked by the exporting country, to the effect that the goods had arrived in Japan and were stored in specially designated areas. This concerned goods for which ICs had not been issued.

15. The CHAIRMAN summed up by saying that the conclusions were similar to those recorded at last year's meeting: -

- (i) Cases were few in number.
- (ii) They did not in practice form a real loophole in the control system.

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- (iii) When goods were held in bond for a long time there was some administrative inconvenience but no security risk.
- (iv) The proposals made by the United States authorities (COCOM 3029) were not acceptable to the countries mainly concerned with the problem.

16. The Sub-Committee agreed to recommend to the Committee continued reliance on the ad hoc arrangements as in the past.

(b) Precautions against forged DV forms

17. The CHAIRMAN recalled that at the last meeting (COCOM Sub-C(57)1 para. 59), Member Countries which issued DVs from a number of posts had been asked to do everything possible to guard against forged DV forms. He asked whether any forgeries had been discovered during the last year.

18. The FRENCH Delegate said that his authorities had had no experience of forgeries but there had been cases where customs stamps and signatures had been missing from the documents.

19. The GERMAN Delegate said that forms had been discovered without sufficient stamps and in one case the values and weights of the goods had been changed, but there had been no intention to divert the goods to the Soviet Bloc.

20. The BELGIAN Delegate said that his authorities had discovered one forgery. He pointed out that this could not occur where DVs were issued by the same authority which was responsible for the IC.

2. The CHAIRMAN concluded that the problem did not appear to be a serious one and with more centralisation of the issue of DV Certificates, forgeries would be easier to detect and the problem would largely disappear.

(c) Linking DVs with relevant ICs.

22. The CHAIRMAN stated that there had been certain developments since the last meeting of the Sub-Committee. The United Kingdom (COCOM 2749), Canadian, (COCOM 2791) and German authorities (COCOM 2911) had submitted memoranda on this subject and there had been a discussion in the Committee (COCOM 2972). He invited Delegates to give further comments.

23. The UNITED KINGDOM Delegate said that his authorities had for the last six months been operating the system described in COCOM 2749. Progress had been steady although somewhat slow. The system was working with 50 per cent efficiency; his authorities would try to improve upon this within the next year.

24. The GERMAN Delegate referred to his authorities memorandum (COCOM 2911). He said that some difficulty occurred if an importer had different consignments for different ICs, in which case he might not know which applied to which. The proposal of his authorities was that control was effected on a consignment by consignment basis and the importer should be told by the exporter which licence number applied to each consignment. The link broke when the importer did not quote the number of the IC. There was a very simple way to ensure that the correct numbers were given. This was for the licensing office, when asking for a DV, to remind the exporter to give the number of the IC to the foreign importer.

25. The FRENCH Delegate stated that since February 1958 his authorities had been urging exporters to quote the relevant IC numbers. As he had pointed out during the Committee discussion (COCOM 2972) the difficulty was most likely to occur with repeated transactions between the same people.

26. The UNITED STATES Delegate said that his authorities stamped on the licence that a DV was needed and also attached a form saying how it should be obtained. They now provided a space for quoting the relevant IC number on the DV form. They also required an anti-diversion clause on the commercial documents. They had ~~some~~ cooperation from the banks but the latter were unwilling to disturb the special relationship between themselves and their clients.

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27. The NETHERLANDS Delegate said that he had already expressed his authorities concern (COCOM 2972 para.8) about the accuracy of the details quoted by the importer. He thought that the German suggestion might well be useful but in his opinion the best solution would be for authorities to ask for the necessary references on commercial documents. The responsibility would rest with the authorities of the exporting country.

28. The JAPANESE Delegate said that as far as the German proposal was concerned, his authorities had already stated (COCOM 2972 para. 5), that they would put into practice a procedure along the lines suggested. It was, however, difficult to bind exporters to pass on the necessary information to foreign buyers. As to the general question of linking ICs and DVs, his authorities were preparing to put the following procedure into practice: ICs would be issued in quadruplicate, the first for the exporter, the second for official transmission to the authorities of the exporting country, the third for the importer when applying for a DV, the fourth for the official records.

29. The ITALIAN Delegate said that the procedure followed in Italy was similar to that mentioned by the Japanese Delegate. The original IC went to the exporter together with a letter giving details of the required DV, so that he could ask the importer to give the IC number when asking for a DV. Customs officials in Italy were authorised to quote the IC number when issuing a DV. As had been mentioned by the French Delegate some difficulties occurred when there were multiple transactions in the same commodity between the same people. Firms of some size however, usually managed to link ICs and DVs satisfactorily.

30. The BELGIAN Delegate said that the problem did not arise in his country because DVs were not issued by customs posts.

31. The CHAIRMAN summed up by stating that some progress had been made in dealing with this problem, while a number of schemes were in the exploratory stage and it was too early to comment on their effect. The solution to this problem remained with the authorities calling for the DV to impress on the exporter that he should pass on to the foreign importer details of the IC under which the export took place. There were some difficulties when a large number of transactions in the same commodity took place between the same exporter and importer. These difficulties were most likely to occur where "unlimited" ICs were issued and further consideration might be given to this point in Sub-paragraph (a) below. The trading community was in the main aware of what was required.

(d) Standard wording in ICs and DVs.

32. The UNITED KINGDOM Delegate said that a new system had been introduced six months ago (see para. 23 above) but it was too early to give an assessment of its efficiency.

33. The JAPANESE Delegate said that he had already referred (para. 28 above) to the new system which his authorities were preparing to put into practice. A DV would be issued after checking with the appropriate IC and standardization would be carried out to the maximum extent possible.

34. The UNITED STATES Delegate said that in the instructions issued by his authorities to traders, the latter were asked to use the same terminology on the DV as on the IC. In any case his authorities asked for full details of dimensions, weight, and horse power.

35. The FRENCH Delegate suggested that DVs should include details of the weight or number of pieces and the value of the goods in order to make sure that it covered all items which had left the exporting country.

36. The CHAIRMAN, after some further discussion, summed up by saying that difficulties sometimes occurred where DVs were issued at a number of posts and not by a central office. Some progress had nevertheless been made during the

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last year: those countries which had adopted new procedures had found that they were working satisfactorily. DVs should state sufficient details to enable the goods to be identified and details of weight or number of pieces and, where possible, of value should be included.

(e) Limitation of the validity of 'unlimited' ICs.

37. The UNITED STATES Delegate referred to his memorandum (COCOM 3028), part III A in which his authorities proposed that an IC which was unlimited as to quantity or value should be valid for not longer than one year from the date of issue. They fully agreed that some kind of blanket document was needed to cover repeated shipments between the same exporter and importer but the system had become rather loose: they had noted instances of ICs which had been valid for three years and under which thousands of tons of goods had been shipped. His authorities thought that certain factors might have changed since the original issue of the IC and that renewal would give them a chance to go into the case again.

38. The DANISH Delegate pointed out that a limit of 12 months would not be sufficient in all cases. Ships, for example, took two or three years to construct.

39. The FRENCH and GERMAN Delegates observed that ICs had to be presented to the exporting country within three months of their issue. They thought that the validity should not be too much extended by adding these three months to the twelve months proposed by the United States.

40. The JAPANESE Delegate said that his authorities did not issue ICs which were unlimited as to quantity or value. They wished it to be clearly understood that the United States proposal had no obligatory effect and no effect on ordinary ICs.

41. The CHAIRMAN summed up by saying that for regular deliveries of standard goods, ICs should have a maximum validity of twelve months. There should be provision for cases of exception, for example, ships or special machine tools which took a long time to construct.

(f) Limitation of use of triangular ICs.

42. The UNITED STATES Delegate referred to the proposal made in his memorandum (COCOM 3028, part IIIB). He said that this was not a serious problem. Triangular ICs were originally intended where commercial secrecy was involved or where the ultimate consignee was unknown. During the last year the United States authorities had been asked for triangular ICs by foreign subsidiaries of United States firms in cases where the parent firm was not a party to transaction. In the opinion of his authorities no responsibility should lie with the third country but rather with the actual exporting country.

43. The FRENCH Delegate said that he disagreed with his United States colleague. He thought that the buying country must have a triangular IC. If a consignment had been bought in France by a United States firm for shipment to the Middle East, the French authorities would have to issue an Export Licence giving the Middle East as the destination; but they would not know whether the United States firm had permission to export these goods to the Middle East. It was normal for the responsibility to rest with the proprietor of the goods. In this hypothetical case the United States firm would have to take responsibility for the eventual delivery and the French authorities could only follow the owner's instructions.

44. The BELGIAN, GERMAN and ITALIAN Delegates expressed their agreement with the French point of view.

45. The CHAIRMAN, after some further discussion, summed up by saying that this was not a particularly serious problem. It was not necessary for a Member Country to issue a triangular IC if the intermediary concern was merely placing the order and drawing a commission. However, if the trader were the principal in the

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transaction, actually buying and paying for the goods, it would then be preferable to issue a triangular IC.

(g) Limitation of IC/DVs to List I and II, Atomic Energy and Munitions List Items

46. The GERMAN Delegate explained that his authorities had asked for the inclusion of this item on the agenda because they wished to stress that they could issue ICs only for items on Lists I and II and the Atomic Energy and Munitions Lists. He quoted from Annex A to COCOM 378 (para. 4): "It was agreed that the field of application should cover the whole of List I and List II but should be applied only in cases selected at the discretion of the source country. This would eliminate unnecessary routine checks and limit action to cases of importance". He said that his authorities had occasionally been asked to give ICs for other items and had felt unable to do so.

47. The UNITED STATES Delegate said that one minor problem occurring in this connexion was that sometimes an International List definition did not exactly tally with a definition given in the United States customs list. It therefore happened that his authorities controlled an item which another Member Country might not judge to be on the International List. He wondered if it would be helpful bilaterally to identify certain items so that other countries could make exceptions to their rules.

48. The CHAIRMAN noted the German reference to COCOM 378 but remarked that marginal differences in definition were covered by COCOM 946 (para. 3). Summing up, he said that it seemed that both Member and non-Member Countries had asked for IC/DVs for non-strategic items. IC/DVs should be issued only for items on Lists I and II and the Atomic Energy and Munitions Lists, with the reservation that they could also be called for in cases of marginal differences of definition.

II. TAC SCHEME.

49. The UNITED STATES Delegate referred to his memorandum (COCOM 3028 part I) in which it was proposed to carry out a study of the TAC scheme in the light of three years' experience. In the past the Sub-Committee had dealt with the events of the previous twelve months, whereas it was now possible to collate the experience of three years. There were no known general weaknesses, but it was felt that the time had now come to obtain more detailed information about the working of the scheme. His authorities had prepared a draft questionnaire which they felt would facilitate the study if completed by all Member Countries.

50. After some discussion, the Sub-Committee adopted the questionnaire which will be found at Annex A to this document and recommended that it should be completed and returned to the Secretariat by July 31st.1958.

III. TRANSACTION CONTROLS

51. The UNITED STATES Delegate said that his authorities had evidence to show that Transaction Controls had prevented the diversion of strategic goods to the Soviet Bloc. An illustration of the effectiveness of the controls was contained in the United States memorandum on illegal shipments of strategic goods (COCOM 3030 paras. 40-44).

52. The CHAIRMAN said that no difficulties in the operation of Transaction Controls had arisen during the past year. The item had been included on the agenda simply to give Member Countries an opportunity for comment.

IV. NON-MEMBER COUNTRIES

(a) Review of Member Country utilization of available non-Member Country cooperation, including non-diversion assurance documentation.

53. The CHAIRMAN said that the extent of non-Member Country cooperation was both wide and extremely useful. He thought that it would be helpful to place each Member Country's experiences on record so that all might know what cooperation was available.

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54. The UNITED KINGDOM Delegate gave the following list of the cooperation afforded to his own authorities by non-Member Countries:

Austria	IC/DV
Bolivia	TAC
Chile	TAC
Finland	End-use statements issued by the Ministry of Trade and Commerce
Formosa	End-use statements issued by the Financial Dept. of the Provisional Government
Irish Republic	IC/DV
Peru	TAC
Switzerland	IC
Yugoslavia	DVs and end-use certificates issued by the Federal Chamber of Commerce

The following countries requested cooperation from the United Kingdom:

Austria	IC/DV
Brazil	DV (occasionally)
Burma	DV (occasionally)
Chile	IC/DV
Cuba	DV (occasionally)
Irak	DV (occasionally)
Irish Republic	IC/DV
Libya	DV
Liechtenstein	IC/DV (occasionally)
Mexico	IC/DV (for mercury)
Peru	IC/DV (for copper and copper scrap)
Puerto Rico	IC/DV (occasionally)
South Korea	DV
Spain	IC (occasionally)
Sweden	IC/DV (occasionally)
Thailand	DV (occasionally)
Tripoli	IC (occasionally)
Yugoslavia	IC

55. The UNITED STATES Delegate said that his authorities had received cooperation from the following countries: Australia, Chile, Finland, French Equatorial Africa, Ghana, Israel, Jamaica, Madagascar, Malaya, Mexico, Morocco, Nigeria, Northern and Southern Rhodesia, Peru, Spain, Sweden, Switzerland, Union of South Africa, Venezuela, Yugoslavia.

56. The BELGIAN Delegate suggested that it would be useful if the names and addresses of the organisations in non-Member Countries which issued IC/DVs could be made available.

57. The UNITED STATES Delegate emphasised the importance of carefully checking shipments to non-Member Countries, especially to Sweden and Switzerland because exporters had frequently been misled by non-official documents. Member Countries could help in this respect by making their documents available to third countries. He noted that Lebanon offered a certain degree of cooperation if sufficient notice were given and mentioned that some Latin-American countries for political reasons did not wish to have their cooperation publicised. He

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hoped that all Member Countries would cooperate in this respect.

58. The BELGIAN Delegate then raised the difficulty of following up ICs and asking for their return if they had not been used. He asked how other Member Countries dealt with this problem.

59. The FRENCH, GERMAN and ITALIAN Delegates said that they had had little experience of this problem but they would make investigations and be prepared to comment at the next meeting of the Sub-Committee.

60. The UNITED KINGDOM Delegate said that it was desirable that end-use certificates issued by non-Member Countries should be transmitted through official channels. His authorities had received an end-use certificate from a non-Member Country which had been privately drawn up and attested by a notary. The document was found to be valueless. The authorities of the country concerned would have taken action against the trader in question but for the general legal position. This illustrated that private certificates could be of use in the control system provided they came through official channels.

61. The CHAIRMAN summed up by saying that there had been considerable cooperation from a very large number of non-Member Countries. Member Countries which had received such cooperation should give details, together with the address of the organisation concerned, to the Secretariat so that a comprehensive record could be made which was readily available to all Member Countries. Member Countries should note their experience in following up ICs which they had issued to non-Member Countries so that information could be exchanged at the next meeting of the Sub-Committee.

(b) Loopholes caused through exports of embargoed goods by non-Member Countries

62. The FRENCH Delegate recalled that he had already raised in the Committee (COCOM 2989 para. 11) the question of the effect which the action of non-Member Countries had on the working of the export control system. Exports of strategic items by non-Member Countries was quite regular and legal in those countries but the result was that the control system was having only a marginal effect on actual exports to the Soviet Bloc. Although some industrial non-Member Countries gave certain assurances to the Committee it seemed that these assurances were insufficient and the French Delegate suggested that the time had perhaps come for new bilateral negotiations to seek some method of closing this loophole in the control system. He wondered whether the Sub-Committee were prepared to study the question themselves or would prefer simply to outline the difficulties so that the Committee itself could work out an adequate solution. He felt that an exchange of information between Member Countries would be helpful in defining the problem. He pointed out that if the result of the present review was to limit the International Lists there was all the more reason to have a stricter application of the control system and it was therefore important to have firmer assurances from non-Member Countries.

63. The GERMAN Delegate said that in general he supported the remarks made by his French colleague. He had already stated in the Committee (COCOM 2989 para. 12) that a reduction of the International Lists might induce non-Member Countries to cooperate more effectively. A big loophole was caused by the non-application of the TAC scheme and transaction controls by certain European non-Member Countries.

64. The UNITED STATES Delegate said that he agreed with his French and German colleagues. The cases on illegal shipments presented in COCOM 3030 proved that shipments by third countries caused a big loophole in the control system. This was not always because of a lack of willingness to cooperate on the part of non-Member Countries; cooperation was not always sought by the Members of the Committee.

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65. The FRENCH Delegate interposed that his authorities had not had all the assistance they might have expected from third countries, on the basis of the agreements which had been concluded. A certain Nordic country in particular had not always shown willingness to cooperate.

66. The CHAIRMAN summed up by saying that the Sub-Committee's attention had been drawn to the fact that the control system tended to be defeated by the activities of certain industrial non-Member Countries. An exchange of information should be made by Member Countries on a bilateral or multilateral basis so that the Committee could estimate the size of the problem involved. When this was done the Committee could consider whether it was advisable to seek further cooperation from non-Member Countries. This was of particular importance in the context of strengthening the control system if the number of items under control were reduced. Furthermore, if the number of items under control were reduced, non-Member Countries might be more willing to cooperate.

V. ILLEGAL DIVERSIONS

- (a) Presentation and discussion of selected cases for the purpose of sharing information on cases and diversion patterns and blocking loopholes which permit such diversions and
- (b) Developing improved investigative and enforcement techniques within the existing control framework

67. The UNITED STATES Delegate introduced his memorandum (COCOM 3030) on illegal shipments of strategic items to the Soviet Bloc. He said that this document contained only samples of hundreds of diversion cases which had come to the attention of his authorities. A large number of the cases referred to boron, which seemed to be in great demand. It seemed that despite the conscientious enforcement of the control system, diversions were taking place and it would therefore be mutually beneficial to discuss cases to see whether a particular pattern could be discerned. The document also illustrated some cases where attempted diversions had been successfully stopped. The United States Delegate said that his authorities thought that a meeting of enforcement officials would be useful.

68. The UNITED KINGDOM Delegate said that his authorities had carefully studied COCOM 3030. They had found the alphabetical notation somewhat complicated and suggested that if a non-Member Country were concerned, it should be named and, if a Member Country were concerned, the type of control operated should be given if it were material to the case.

69. The UNITED STATES Delegate gave the following list of non-Member Countries which had been designated by a letter in COCOM 3030:

K	Switzerland
L	Sweden
M	Austria
N	Lebanon
Q	Mexico
R	Yugoslavia
S	Tangier
DCT	Dependent Overseas Territory

70. The GERMAN Delegate said that he would submit that afternoon a diversion case for consideration by the Sub-Committee (COCOM 3052).

71. A Working Group comprising the representatives of the Belgian, Danish, French, German, Italian, Japanese, Netherlands, United Kingdom and United States Delegations was then set up to consider the diversion cases contained in COCOM 3030 and COCOM 3058. The Working Group then met separately under the Chairmanship of Mr. Kagami (Japan) and reported to the Sub-Committee on April 25th. The report of the Chairman of the Working Group will be found at Annex B to this document.

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72. The GERMAN Delegate referred to cases where transit countries stopped shipments because there was no TAC and the owners of the goods then decided to re consign the shipment to a non-Member Country. It was important that both the exporting country and the country of the new destination should be given full details of the case.

73. The UNITED STATES Delegate said that he agreed with the point raised by his German colleague. He referred again to the identification of countries involved in diversion cases. He had already identified the non-Member Countries mentioned in COCOM 3030 and suggested that consideration should be given to mentioning Member Countries also by name. There was no question of mentioning individual firms but his authorities had no hesitation in mentioning the name of the United States when concerned in a diversion case and thought that other Member Countries might be willing to do the same.

74. The JAPANESE Delegate said that he agreed that the alphabetical notation was complicated. As regards, however, the question of revealing the names of Member Countries involved in diversion cases, he knew that strong arguments against this practice has been raised in the Committee and that it might be difficult to change the present procedure.

75. The CHAIRMAN summed up the discussion on diversion cases by saying that the Working Group had found that no particular pattern of diversion could be discerned. In cases where transit countries stopped shipments because there was no TAC and the owners wanted to re consign to a non-Member Country, the exporting country and the country of the new destination should be given full details. Further study should be given to diversion cases already submitted and other cases should be sent to the Secretariat. Referring to the question of naming the countries involved in diversion cases, the Chairman said he felt that there was no objection to naming non-Member Countries and that this was a considerable help in understanding the case under scrutiny. He noted that the question had already been discussed in the Committee, where some Delegations had stated their objection to naming Member Countries. He would merely state that from the technical point of view it would be of assistance in deciding the pattern of diversion cases to know the name of the country concerned. There was no question of mentioning the names of firms.

VI. MINIMUM SHIPMENTS

76. The CHAIRMAN said that it would be useful if the Sub-Committee's knowledge of the minimum shipments allowances made by Member Countries were kept up-to-date.

77. The FRENCH, GERMAN, JAPANESE and UNITED STATES Delegates said that the procedure in their countries remained unchanged. (COCOM Sub-C(57)1 paras. 98, 96, 95 and 97 respectively).

78. The NETHERLANDS Delegate said that his authorities had changed the minimum shipments procedure since the last meeting. All goods, irrespective of their nature and destination, were subject to export licensing with the exception of consignments of less than 1,000 guilders in value sent to other O.E.E.C. countries.

79. The BELGIAN Delegate said that his authorities permitted all goods except diamonds to be exported by post or railway without a licence if their value did not exceed 2,500 Belgian Francs.

80. The ITALIAN Delegate said that his authorities insisted that all exports of embargoed goods, irrespective of value, should be licensed.

81. The CHAIRMAN summed up by saying that the Sub-Committee's factual information had been brought up-to-date. Member Countries which operated minimum shipments exceptions were satisfied that there was no danger to the control system.

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COCOM Sub-C(58)2VII. INSURANCE

82. The UNITED KINGDOM Delegate referred to the statement he had made at the last meeting of the Sub-Committee (COCOM Sub-C(57)1 para. 118). The CANADIAN and UNITED STATES Delegates had then given an assurance that the insurance of illegal transactions would be covered by their regulations. Because of the importance they attached to this question, the United Kingdom authorities would like a precise statement on the extent to which the insurance of embargoed goods was prohibited by the general law of each Member Country. They would be grateful for details of how any prohibitions might apply in respect of:

- (a) Shipments from a Member Country
- (b) Shipments from third countries, where the principal was a national or resident of a Member Country, subject to the jurisdiction of its courts and
- (c) Shipments from third countries, where the principal was not a national or a resident of a Member Country and therefore not subject to jurisdiction in its courts.

Commenting on the observations recorded in paragraph 121 of the Minutes of the Sub-Committee held in March 1957, (COCOM Sub-C(57)1) the United Kingdom Delegate said that it did not follow that re-insurance would always be placed in a country which controlled the insurance of embargoed goods and, in any case, the disclosure of the nature of the goods was not an essential requirement under treaty re-insurance.

83. The CHAIRMAN said he found it hard to believe that the law anywhere would not allow an insurer to be tried for aiding an offence against the law.

84. The BELGIAN Delegate said that there was no legislation in Belgium which directly affected the insurance of embargoed goods. He was sure, however, that insurance companies would guard against any risk and make sure that the commercial documents were in order before they made a contract. A certain amount of collaboration could therefore be expected from the insurance companies.

85. The NETHERLANDS Delegate stated that the position was not covered by law in his country. 40% of all insurance contracts concluded in the Netherlands were for re-insurance. Of the remainder about 70% was reinsured either in New York or London and very small amounts in France.

86. The GERMAN Delegate said that his authorities had a special arrangement with the association of assurance companies. The latter had accepted a special clause for each contract which disclaimed responsibility for unauthorised shipments. This clause had been accepted by all companies effecting insurance on exports in Germany. He hoped to be able to provide more information after further study.

87. The JAPANESE Delegate said that there was no particular legislation in Japan which controlled the assurance of embargoed goods. However, the insurance companies knew very well that no goods could be exported or transhipped to the Soviet Bloc without official authorisation. So far there had been no problems concerning either residents or non-residents. Where companies insured or re-insured goods exported from third countries to the Soviet Bloc, the premium had to be paid in foreign currency and with the authorisation of the Japanese Ministry of Finance, thus the transaction was subject to Government control. So far there had been no case of this kind, either for strategic or uncontrolled goods.

88. The UNITED KINGDOM Delegate said that although a contract for the insurance of the illegal export was not actually proscribed in the United Kingdom, his authorities did not consider this important because no court would uphold a company's liability in such a case. The greatest danger came from cases of treaty re-insurance where the commodity was not stated.

89. The NORWEGIAN Delegate said that there was no particular legislation in his country covering the insurance of embargoed goods, with the exception of a special re-insurance scheme for shipments to China which had been in operation since 1953.

89 (a). The FRENCH Delegate stated that their authorities had no means of intervening in the insurance field. They considered that the existing, voluntarily accepted rules constituted the maximum control limit and they saw no possibility of going further. Moreover, the legislation at present in force in France did not permit of any intervention as far as insurance was concerned.

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COCOM Sub-C/5812

90. The CHAIRMAN summed up by saying that although a number of Member Countries had no legislation which directly covered the insurance of embargoed goods, it seemed that the normal caution of insurance companies showed them that insurance would not be valid if the transaction concerned were against the law. There was no evidence to show that insurance of illegal transactions was taking place. Member Countries should send their answers to the questions put by the United Kingdom Delegation as soon as possible to the Secretariat.

VIII. NEXT MEETING

91. After a brief discussion, the Sub-Committee decided to recommend that the next meeting should be held in November 1958 and that particular attention should then be given to diversion cases. All relevant documents should be sent to the Secretariat by September 30th to allow adequate time for translation and study.

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ANNEX A To
COCOM Sub-C(58)2TAC QUESTIONNAIREA. Narrative Comments

1. To what extent do your TAC regulations permit your authorities to detain shipments of strategic goods where there is good reason to believe or suspect that they are en route for an ultimate Soviet Bloc destination?
2. Have you seen any evidence of falsified or forged TAC certificates?
3. Have any TACs been issued to local residents acting as a principal for shipments of strategic goods from third countries to the Soviet Bloc? If so, is a problem created which might lead to a weakening of the TAC scheme?
4. Have any enquiries been received from transshipping countries regarding strategic shipments which were detained in transit because they were not accompanied by TACs issued by your Government but were stated or known to be destined to the Soviet Bloc? Total number of shipments involved?
5. What is your estimate of the effectiveness of the TAC scheme?
6. What are the weaknesses or loopholes in the TAC scheme? How may they be remedied?

B. Statistics on Actions as Exporting Country195519561957

1. TACs issued to local exporters for shipments of strategic goods to the Soviet Bloc. Total number and value.

C. Statistics on Actions as Transshipping Country

1. Shipments of strategic goods from non-cooperating/ exporting countries destined to the Soviet Bloc permitted to move in transit. Total number.
2. Shipments of strategic goods stated or known to be destined to the Soviet Bloc prevented from moving in transit. (Explain how final destination became known in each instance if the shipment was not stated but known to be destined to the Soviet Bloc).
 - (a) From TAC cooperating exporting countries (including TCCs) not accompanied with TACs or equivalent documentation. Total number.
 - (b) From non-cooperating exporting countries but not accompanied with TACs from a principal resident in a TAC cooperating country. Total number.
 - (c) Others from non-cooperating exporting countries. (Give details).

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ANNEX A To
OSCOM Sub-C(53)2

1955 1956 1957

3. Shipments of strategic goods destined to the Soviet Bloc identified while in transit and prevented from moving in transit. Total number.

- (a) Identified by inspection and reference to commodity identification manuals.
- (b) Identified by inspection or other observation without reference to commodity identification manuals.
- (c) Identified through other means (Give details).

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ANNEX B TO
COCOM Sub-C(53)2REPORT OF THE CHAIRMAN OF THE WORKING GROUP ONILLEGAL DIVERSIONS OF STRATEGIC GOODSApril 25th, 1958

1. In compliance with the Sub-Committee's mandate, a Working Group met yesterday afternoon with a view to exchanging information about diversion cases and to obtaining any suggestions which might help to prevent future diversions. The meeting was attended by the representatives of the Belgian, Danish, French, German, Italian, Japanese, Netherlands, United Kingdom and United States Delegations. The Working Group had before them a memorandum submitted by the United States Delegation (COCOM 3030). In view, however, of the volume of the document which had been submitted only recently, it was the view of almost all the Delegations that while they attached great importance to this document they wished to have further time to allow them to study it with the attention it deserved. Moreover, the French text of the document was made available only that afternoon. Since the time allotted to the Working Group for the discussion was limited, it was suggested that a few cases of diversion should be selected for study which would be illustrative of various diversion patterns, with a wish that further opportunities would be provided for the study of other diversion cases on the occasion of the next Export Controls Sub-Committee meeting.

2. Before entering into the discussion of individual cases, certain general remarks were made bearing upon the patterns of diversions. One Delegation observed that the cases contained in COCOM 3030 did not seem to reveal any new pattern utilized by illegal traders for diversion, but that they would fall under the following categories:

- (a) cases in which no legitimate end-use certificates were called for,
- (b) those in which a Member Country had no power to stop the goods in transit,
- (c) those in which no transaction controls were applied by the country concerned,
- (d) those involving goods going from one non-Member Country to another non-Member Country,
- (e) those involving sheer misrepresentations or falsification of documents.

Furthermore, another Delegation made distinctions between three types of diversions. One type of diversion might be considered due to the insufficient application of the existing controls by Member Countries. In the view of that Delegation this type of diversion could be overcome. A second type would be smuggling, which always existed and would be impossible to prevent entirely. A third type would be diversions which took place because certain non-Member Countries did not apply adequate controls, and this seemed to constitute weak point of the strategic controls.

3. After taking note of these remarks, the Working Group turned to individual cases for examination. The German Delegation distributed a document (COCOM 3058) describing a case for information and study by the Group. The Group reviewed the following cases: -

- 1. Diversion of nickel shipments to the Soviet Bloc
Attachment 2 to COCOM 3030, page 13
- 2. Transshipment of copper and nickel - COCOM 3058
- 3. Case of Borax Diversion prevented - No.II, Attachment 1 to
COCOM 3030, page 5.

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ANNEX B TO
COCOM Sub-G(58)2

4. Country "G" borax exports to the non-participating country "L"
No. IV Attachment 1 to COCOM 3030, page 8.
5. Attempted diversion of borax powder to Soviet Zone of Germany,
No. VI to Attachment 1 of COCOM 3030.

While the Working Group took as a basis for discussion these particular cases of diversion or attempted diversion Delegates' remarks were not limited to the ones mentioned above. Other cases were described or alluded to by Delegates in order to indicate various techniques employed by illicit traders.

4. In the course of the discussions which took place, a number of points were made about the loopholes exploited by illicit traders and the possible measures that Member Countries might take in preventing further similar evasions. In a certain case it was observed that Member Countries concerned had taken all the precautionary measures which were feasible, but that the goods were diverted as a result of lack of cooperation among some non-Member Countries. In another instance, diversion was made possible by the misuse of a Member Country Import Certificate by a national of a non-Member Country. Moreover, mention was made of a case involving goods which were exported from a Member Country to a non-Member Country and then from that non-Member Country back to the original Member Country, but were diverted to the Soviet Bloc on the way of their return to that Member Country. In connexion with this last instance it was pointed out that this could happen in the case of exports from one Member Country to another Member Country when the goods were being returned from the importing Member Country to the exporting Member Country. One Delegation assured the Working Group that any re-export from his country would require an export licence which would subject such returned goods to control, but were not certain whether in the application for the present type of re-export an IC would be required.

5. Active discussion also took place about a triangular transaction involving customs processing by a third country. Some danger of diversion seemed to exist as to the disposition of those portions of the goods which would remain in the processing country after customs processing had taken place.

6. Still another case among those mentioned above involved an attempted transshipment to the Soviet Bloc and when this failed to an ostensibly non-Soviet destination. In this connexion it was pointed out that it would be extremely difficult from legal points of view to stop the latter transaction since the shipment was going to a Western Country. As a possible remedy for this difficulty it was suggested that the transit country should (a) inform the country of origin that the shipment had been intended for the Bloc destination, and (b) inform the country of new destination that the request for shipment of the goods concerned to the Soviet Bloc had been rejected.

7. Appreciation was expressed by some Delegations for the exchange of information which had taken place among the authorities of various Member Countries in the investigation of diversion cases. In particular, such exchange of information would be useful in regard to the case No. IV in attachment I to COCOM 3030 and further cooperation of Member Governments was requested to locate the borax which had been diverted. Moreover, the case No. VI to Attachment 1 to COCOM 3030, Attempted Diversion of Borax Powder to the Soviet Zone of Germany, was specifically mentioned by a Delegation as a successful result of the cooperation among investigation services in Member Governments.

8. While the study conducted by the Working Group did not lead to any specific conclusions, serious and substantive discussions took place from which certain existing loopholes and suggestions for possible remedies emerged. Under the conditions in which the Working Group had been convened, it should be admitted that Delegations were not adequately prepared for arriving at some concrete recommendations to the Sub-Committee. However, the exchange of information was found extremely useful, and the Working Group was in agreement that the COCOM 3030 as well as the paper submitted by the German Delegation deserved a thorough study by the competent authorities of each Member Country. It was generally felt that a future meeting was desirable for further examination of various diversion cases by experts on the occasion of the next meeting of the Export Controls Sub-Committee.

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COCOM Doc. No. 3216

Date: August 19, 1958

MEMORANDUM FROM THE UNITED STATES DELEGATION

Concerning

THE ELEVENTH BATTLE ACT REPORT

1. The Eleventh Semiannual Report to the Congress of the United States by the Administrator of the Mutual Defense Assistance Control Act of 1951 ("Battle Act"), was released to the public on August 1, 1958. As explained to the Committee by the United States Delegate on August 1, 1958, this edition of the Battle Act Report, entitled "Statistical Review of East-West Trade 1956-57", was not submitted to delegations in draft form prior to publication because it consists only of statistical tables and of other material incorporated in appendices of previous editions, and because a time factor was involved.
2. Two copies of the Report are being made available to each delegation, and an additional supply is being made available to the Secretariat. Copies are also being made available to Member Governments through United States Missions.

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S E C R E T

ADDENDUM TO

1st December, 1958

COCOM Document Sub-C.(58) 2

COORDINATING COMMITTEE

A D D E N D U M T O

CHAIRMAN'S REPORT

ON

A MEETING OF THE EXPORT CONTROLS SUB-COMMITTEE

April 22nd-25th, 1958

ADD the following new paragraph 89(a):

89(a). The FRENCH Delegation stated that their authorities had no means of intervening in the insurance field. They considered that the existing, voluntarily accepted rules constituted the maximum control limit and they saw no possibility of going further. Moreover, the legislation at present in force in France did not permit of any intervention as far as insurance was concerned.

(Added to basis doc.)
S E C R E T

S E C R E T

1er décembre 1958

ADDENDUM au

Doct. COCOM Sous-Com(58)2 B

COMITE DE COORDINATION

A D D E N D U M A U

RAPPORT DU PRESIDENT DU SOUS-COMITE

SUR

LES CONTROLES A L'EXPORTATION

Session du 22 au 25 avril 1958

Page 16, du document en question, ajouter le par. 89(bis) suivant :

89(bis). La délégation française précise au Comité que ses autorités n'ont aucune possibilité d'intervenir dans le domaine des Assurances. Elle estime que les règles existantes et librement acceptées constituent une limite maximum de contrôle qui ne lui paraît pas possible de dépasser. D'ailleurs la législation française en vigueur ne permet pas d'intervenir sur le plan des assurances.

S E C R E T